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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210234
Party	Defendant Gary Domel
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Submission	Opposition/Response to Motion
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Signature	/Janie Muennink/
Date	11/13/2013
Attachments	21131 B00001 Applicants Response to Motion.pdf(251820 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**CAROLE FAULKNER, INDIVIDUALLY
AND D/B/A C I HOST, AND
CHRISTOPHER FAULKNER,
INDIVIDUALLY AND D/B/A C I HOST;**

Opposers,

v.

GARY DOMEL,

Applicant.

§ **In the Matter of Application**
§ **Serial No. 85703135**
§
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§ **Mark: C I Host**
§
§ **Opposition No. 91210234**
§
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§ **Published: February 12, 2013**
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**APPLICANT'S RESPONSE TO MOTION TO COMPEL
THE ORAL DEPOSITION OF GARY DOMEL**

Applicant Gary Domel responds in opposition to the Motion to Compel the Oral Deposition of Gary Domel.

USPTO Rules Provide for Deposition in Austin, Texas

The USPTO Rules of Practice expressly provide that the “deposition of a natural person shall be taken in the Federal judicial district where the person resides or is regularly employed or at any place on which the parties agree by stipulation. USPTO Rules of Practice § 2.120(b). At the time of the filing of this trademark opposition proceeding, Gary Domel resided in, and has continued to reside in Spicewood, Texas, which is within the Austin Division of the Western District of Texas judicial district. See *Domel Aff. at ¶ 2 attached as Exhibit A*. Likewise, Gary Domel has been regularly employed in Austin, Texas since the filing of this opposition proceeding and continues to be employed in Austin to this date. *Domel Aff. at ¶2*. The parties have not stipulated or otherwise agreed to a deposition in Dallas, Texas. Therefore, by rule, the deposition of Gary Domel is required

to be conducted in Austin, Texas. Applicant's counsel has offered to present Gary Domel for deposition in Austin, Texas.

Movant suggests that because the Trademark/Service Mark Application filed on August 14, 2012, has an address in Bedford, Texas, it is permitted to compel the deposition in Dallas, Texas. Not surprisingly, Movant offers no support for its proposition. Such a proposition ignores the plain language of the USPTO Rule governing the location of depositions, and is inconsistent with the Federal Rules of Civil Procedure. In the absence of exceptional or unusual circumstances, the deposing party should be required to take the deposition at a location in the vicinity in which the deponent resides, even if the deponent is a party. *See In re Outsidewall Tire Litigation*, 267 F.R.D. 466, 474 (E.D. Va. 2010); and *Metrex Research Corp. v. United States*, 151 F.R.D. 122, 125 (D. Colo. 1993).

Movant's desired deposition location of Dallas, Texas is not in the vicinity of Gary Domel's place of residence or place of business, but approximately 200 miles north of deponent's residence and place of business in Austin, Texas. Movant has failed to provide any exceptional or unusual circumstances to justify deviating from the USPTO Rules of Practice or Federal Rules of Civil Procedure governing the location of depositions. For such reasons, Opposers' Motion to Compel should be denied.

Prayer

Wherefore, Gary Domel requests that this Trademark Trial and Appeal Board deny Movant's Motion to Compel the Oral Deposition of Gary Domel and order that any discovery deposition of Gary Domel be conducted in Austin, Texas, and that he have any recover such other and further relief to which he may show himself entitled.

Respectfully submitted,

WINSTEAD PC

401 Congress Avenue

Suite 2100

Austin, Texas 78701

Telephone: (512) 370-2800

Facsimile: (512) 370-2850

By: 

James G. Ruiz

SBN 17385860

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

By signature above, I hereby certify that a true and correct copy of the foregoing document was served via fax to the following on this 13th day of November, 2013.

Carole A. Faulkner
4010 Ambleside Ct.
Colleyville, Texas 76034
Telefax No.: 469-675-6404

Bret A. Madole
Mark A. Goodman
David, Goodman & Madole
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5420 LBJ Freeway, Suite 1200
Dallas, Texas 75240
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JAMES G. RUIZ

EXHIBIT A

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AFFIDAVIT OF GARY DOMEL

BEFORE ME, the undersigned authority, on this day appeared GARY DOMEL, who, after being duly sworn by me, stated under oath that the following statements are true and correct:

1. "My name is Gary Domel. I am over eighteen (18) years of age, and I have never been convicted of a felony or crime involving moral turpitude. I am the Applicant in this proceeding and am competent and capable of providing this affidavit testimony. I have personal knowledge of the facts set forth herein.

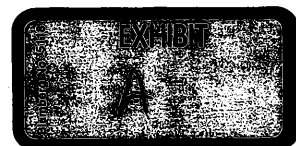
2. At the time of the filing of the Notice of Opposition to Registration of Trademark on April 12, 2013, and all times material to this proceeding, I have resided at 25709 Cliff Circle, Spicewood, Travis County, Texas 78669-3050. Similarly, at the time of the filing of the opposition, I have been regularly employed at my place of business located at 3919 Juniper Trace, Austin, Travis County, Texas 78738, and continue to work at that location. My residence and regular place of business at the time of the filing of the trademark opposition, and all time since then, is within the judicial district of the Western District of Texas, Austin Division. I have not lived or been employed in Dallas or Fort Worth, Texas.

FURTHER AFFIANT SAYETH NOT.

Gary Domel
Gary Domel, Affiant

STATE OF TEXAS

§



§
COUNTY OF TRAVIS §

SUBSCRIBED AND SWORN TO BEFORE ME by Gary Domel on the 13 day of
November, 2013.



Judy L. Curbow
Notary Public, State of Texas

Typed or Printed Name of Notary

My Commission Expires:

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21131-B00001 11/12/2013

AFFIDAVIT OF GARY DOMEL

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